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**REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND  
AGENDA REPORT**

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: February 10, 2009

RE: **Resolution Amending the Exclusive Negotiating Agreement (“ENA”) with Oakland Maritime Support Services for the Development of Approximately 15 Acres within the Former Oakland Army Base (“Army Base”) to Extend the ENA Term from February 28, 2009 to the Earlier of February 28, 2011 or the Resolution of the California Environmental Quality Act Litigation Filed by the East Bay Municipal Utility District Against the City and Redevelopment Agency Regarding the Army Base**

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**SUMMARY**

In November 2007, the Redevelopment Agency executed an Exclusive Negotiating Agreement (“ENA”) with Oakland Maritime Support Services (“OMSS”) for the development of 15 acres in the East Gateway of the former Oakland Army Base (see Attachment A).

Staff and OMSS were negotiating a long-term ground lease when the ENA expired. The Agency Board extended the ENA to February 28, 2009 to allow staff time to complete negotiations and several administrative actions, which must occur prior to execution of the Lease.

Staff has since concluded negotiations with OMSS and would be requesting the Agency Board’s approval to execute a Lease Disposition and Development Agreement (“LDDA”) if not for delays due to concerns regarding a tentative court decision in favor of East Bay Municipal District (“EBMUD”). In a suit filed against the City of Oakland, EBMUD argued that the City’s Supplemental Environmental Impact Report (“SEIR”) for the former Oakland Army Base, specifically with respect to a proposed Auto Mall, inadequately addresses the environmental impacts of proposed new land uses. The subsequent court decision finds the City out of compliance with the California Environmental Quality Act (“CEQA”). As currently written, the decision arguably precludes any development on the Army Base before a new SEIR is prepared, potentially a year-long process. Whether or not an Addendum to the existing EIR involving a shorter three-month timeframe will be allowed will depend on the final court decision, expected at the end of February 2009.

Further delaying the execution of a Lease is the completion of the administrative actions preceding the Lease. They cannot be approved until the City is in compliance with CEQA. The ENA will expire well before the City is able to prepare the appropriate environmental document

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and complete the administrative actions. To afford both OMSS and the Agency protection under an agreement until the Lease can be executed, staff recommends that the Agency Board extend the ENA to the earlier of February 28, 2011 or the resolution of the EBMUD litigation.

## **FISCAL IMPACT**

Authorization of the extension does not commit the Agency to the expenditure of any funds, although the future approval of a Lease will require the Agency to incur costs for: (1) environmental remediation; (2) planning permit fees; (3) deconstruction of existing warehouse structures; and (4) installation of new utilities or other infrastructure (stubbed to the property line). These costs will depend on the design and scope of the infrastructure, which is still being planned. Funding for these site preparation costs would come from existing funds in the FY 2007-09 Oakland Army Base Redevelopment Project Area Budget that are allocated to fund environmental remediation in the Gateway Development Area (GDA).

## **BACKGROUND**

In 2002, the City prepared a program-level EIR associated with the redevelopment of the former Oakland Army Base. The EIR put forward a program of land uses, which included light industry, office/research and development, retail, warehouse/distribution, maritime support, and open space in the GDA.

In 2005, the City began to study the development of an Auto Mall, which had not been contemplated in the EIR. On January 19, 2006, the City issued a Notice of Preparation (NOP) for an SEIR regarding the Auto Mall project. On December 5, 2006, the City certified the resulting SEIR and approved the Auto Mall project.

On May 17, 2007, EBMUD, which operates a wastewater treatment plant adjacent to the proposed site of the Auto Mall, initiated proceedings challenging the SEIR. EBMUD's petition to the court asserted that the SEIR failed to (1) adequately describe the environmental setting; (2) address the impacts of the planned abandonment of the existing roadway; (3) address the impacts of increases in traffic generally and increases in traffic when combined with rail traffic and with trucks carrying hazardous materials to the EBMUD plant; (4) evaluate the impacts of the Auto Mall on wastewater requirements through the use of existing sewer lines that EBMUD alleged to be inadequate to support the project; and (5) adequately consider mitigation measures.

While EBMUD's petition was pending, the City prepared an Addendum to the SEIR to assess changes related to the proposed Auto Mall's site layout and access to the neighboring EBMUD property, and to provide additional supporting information for traffic and wastewater. The City believed that the additions, clarifications and modifications addressed in the Addendum were minor, did not change the original conclusions of the SEIR, and therefore would not trigger the requirement under California Environmental Quality Act ("CEQA") guidelines to prepare a

supplemental or subsequent EIR. On December 7, 2007, the City mailed out a notice of a Public Hearing set to take place on December 18, 2007 regarding the Addendum and published notice via local newspapers. On December 18, 2007, the City adopted the Addendum as an Addendum to the SEIR and approved it as an amendment of the development plan for the Army Base.

On January 17, 2008, EBMUD filed an amended petition, which added the supplemental claim that the City violated CEQA with the adoption of the Addendum to the SEIR. This claim asserted that the Addendum made significant changes to the Auto Mall project, which included modification of the existing Wake Avenue entrance to the EBMUD facility and the planned use of a 15-inch sewer line that runs beneath the project site. EBMUD further contended that the City's failure to respond to pre-SEIR comments detailing concerns regarding the use of the 15-inch sewer line violated CEQA guidelines in the first instance and that the later inclusion of comments relating to the sewer line in the Addendum was insufficient to remedy this violation.

On November 7, 2008, the California Superior Court released a Tentative Statement of Decision that granted EBMUD's petition in part. The Court ruled that the City's use of the Addendum was improper because it introduced new information. Under CEQA guidelines, an addendum may be used only for minor technical changes or additions to the prior EIR.

The Court stated that a peremptory writ of mandate would be issued ordering the City to (1) set aside its certification of the SEIR and its adoption of the Addendum; (2) prepare a new SEIR for the Auto Mall project; (3) suspend all activity that could result in any change or alteration to the physical environment until the City is in compliance with CEQA; and (4) file a return in the Court specifying what the City has done to comply with the writ. The City disagrees with the court's conclusions. The City filed objections to the tentative decision and is awaiting a final decision as of the submission of this report.

The third directive arguably requires suspension of development in the entire Army Base rather than just the area of the Auto Mall. The City has requested the Court to clarify if that is its intent. If so, then the City must prepare a new SEIR for the entire Army Base. If the tentative decision was too broadly stated, then the only environmental document required for the OMSS project is an Addendum, which will discuss how the development will manage wastewater disposal.

## **KEY ISSUES AND IMPACTS**

Pending resolution of the EBMUD litigation are several administrative actions that require the City to be in CEQA compliance before they can be carried out. They include the following items:

- Planning Commission approval of
  - OMSS's historic preservation analysis
  - Findings for Policy 3.5 of the General Plan's Historic Preservation Element

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- Tentative Parcel Map
- City Council approval of a Deconstruction Fair Share Cost Agreement with the Port of Oakland

These administrative actions in turn must be completed before the Agency Board can consider approval of a proposed ground lease. Staff has performed all of the work technically and legally possible in advancing the actions and recommends an extension to the ENA to allow sufficient time to comply with CEQA as directed by the Court and to bring the actions to a close.

Both the Agency and OMSS have invested considerable time and resources to bring this project forward. The project enables the Agency to fulfill the Agency's Bay Conservation and Development Commission ("BCDC") obligation, implement two EIR mitigation measures, and meet Agency and community goals. For OMSS, the project represents not only a business opportunity, but also a means of putting into effect ideas on environmentally progressive development. The timeframe for settling the EBMUD litigation is uncertain, which places a corresponding uncertainty on the procedural approvals and execution of a Lease. The Agency and OMSS require the assurance of each other's continued commitment to the project, which an extension to the ENA will provide. Staff plans to return to the Agency Board and seek Agency approval of a long-term ground lease for the OMSS project as soon as the EBMUD litigation is resolved and the administrative actions can be approved.

## PROJECT DESCRIPTION

OMSS proposes to build a 15-acre service-rich, one-stop Ancillary Maritime Support (AMS) facility, which can help attract trucks out of Oakland's neighborhoods, particularly West Oakland. The development will consist of three main components:

- (1) Truck Fuel and Support Services:
  - Truck parking
  - Container storage space
  - Truck wash and maintenance facilities
  - Truck fueling stations dispensing only biodiesel and alternative fuels
  - Trans-load facility
- (2) Convenience Retail and Gas, which will include a convenience market and an auto fueling station
- (3) Multi-use Development:
  - Office space for trucking companies
  - Flex space for retail and business services
  - Food court

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OMSS's project would relocate approximately 30 trucking companies (employing an estimated 400 truckers) out of West Oakland. In addition to reducing the number of trucks traveling through the residential neighborhoods, the project would also offer employment and local business opportunities to Oakland residents and training programs for those seeking to enter or advance in the trucking industry.

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** The project would retain and generate significant high-quality jobs and tax revenue, and would increase land values in a vacant, blighted, abandoned military facility.

**Environmental:** The proposed AMS use would help to mitigate the critical issue of truck traffic through the residential areas of West Oakland and the adverse effects of diesel emissions on West Oakland residents.

**Social Equity:** The project would retain and generate a range of jobs that are accessible to Oakland residents with a range of educational backgrounds. Also revenue generated from the redevelopment of the Army Base could be used to fund open space and other community benefits for West Oakland and the rest of Oakland.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

OMSS's proposed development plans address disability and senior access issues and will comply with all applicable local, state and Federal accessibility regulations.

### **RECOMMENDATION(S) AND RATIONALE**

Staff recommends that the Agency extend the OMSS ENA term from February 28, 2009 through the earlier of February 2011 or through the resolution of the CEQA litigation with EBMUD and the administrative work required to execute the LDDA subsequent to the resolution of the litigation. The Agency and OMSS have completed negotiations for the development of a trucking facility in the East Gateway and are ready to execute a Lease Disposition and Development Agreement if not for the delay caused by the CEQA lawsuit. This extension will allow staff time to resolve the lawsuit and outstanding administrative actions, and then return to the Agency Board for approval of a long-term ground lease with OMSS.

**ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY**

Staff requests the Agency to approve the attached resolution amending the Exclusive Negotiating Agreement with Oakland Maritime Support Services to extend the Agreement from February 28, 2009 to the earlier of February 28, 2011 or the resolution of the CEQA litigation with EBMUD.

Respectfully submitted,



\_\_\_\_\_  
Dan Lindheim, Director  
Community and Economic Development Agency

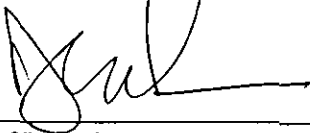
Reviewed by:

Gregory Hunter, Deputy Director  
Economic Development and Redevelopment

Al Auletta, Redevelopment Area Manager

Prepared by:  
Hui Wang, Urban Economic Analyst  
Redevelopment Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



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# Attachment A - Gateway Development Areas



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Approved as to form and legality:

By:   
ORA Agency Counsel

## REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. \_\_\_\_\_ C.M.S.

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**RESOLUTION AMENDING THE EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) WITH OAKLAND MARITIME SUPPORT SERVICES FOR THE DEVELOPMENT OF APPROXIMATELY 15 ACRES WITHIN THE FORMER OAKLAND ARMY BASE (“ARMY BASE”) TO EXTEND THE ENA TERM FROM FEBRUARY 28, 2009 TO THE EARLIER OF FEBRUARY 28, 2011 OR THE RESOLUTION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT LITIGATION FILED BY THE EAST BAY MUNICIPAL UTILITY DISTRICT AGAINST THE CITY AND REDEVELOPMENT AGENCY REGARDING THE ARMY BASE**

**WHEREAS**, the Redevelopment Agency of the City of Oakland (the “Agency”) owns approximately 165 acres of real property located in the “Gateway Development Area” (“GDA”) within the former Oakland Army Base; and

**WHEREAS**, the Oakland Army Base Redevelopment Plan Environment Impact Report (“EIR”) requires the Agency and the Port of Oakland to jointly implement mitigation measures to reduce the impacts of trucking on West Oakland; and

**WHEREAS**, the Bay Conservation and Development Commission (“BCDC”) requires, as part of the 2006 land conveyance from the Oakland Army Reuse Authority to the Agency and the Port of Oakland, 15-acre set-asides by both entities for Ancillary Maritime Support Services (AMS); and

**WHEREAS**, on June 22, 2007, staff issued a Request for Proposals (“RFP”) for the development of an AMS facility within a 15-acre portion of the East Gateway Development Area specifically focused on trucking and truck-related activities, such as parking, trans-load facilities, offices and services targeting the local trucking sector; and

**WHEREAS**, staff received seven proposals and subsequently conducted a thorough review and interview process that included five finalists; and

**WHEREAS**, the proposal from Oakland Maritime Support Services (“OMSS”) was for the development of a 15-acre multi-use project that includes truck parking, a trans-load facility,



offices for trucking companies or related businesses, retail, fuel, and other services catering to trucking employees and businesses; and

**WHEREAS**, staff determined through the review and interview process that among the five finalists, OMSS's proposal was the most responsive to the RFP; and

**WHEREAS**, on November 6, 2007, the Agency approved Resolution Number 2007-0076, authorizing an Exclusive Negotiating Agreement with OMSS for a term of 180 days to negotiate the financial terms, utilities, preservation or deconstruction of existing warehouses in the East Gateway, and other site preparation issues in the development of the proposed project; and

**WHEREAS**, the six-month ENA term expired August 11, 2008; and

**WHEREAS**, on October 28, 2008, the Agency approved Resolution Number 2008-0095, extending the term of the existing ENA from August 11, 2008 to February 28, 2009, to allow the staff time to complete negotiations with OMSS and the following administrative actions:

- Planning Commission approval of
  - OMSS's historic preservation analysis
  - Findings for Policy 3.5 of the General Plan's Historic Preservation Element
  - Tentative Parcel Map
- City Council approval of a Deconstruction Fair Share Cost Agreement with the Port of Oakland;

and

**WHEREAS**, the Agency and OMSS have completed negotiations, but completion of the administrative actions has been delayed in part due to concerns regarding a lawsuit brought by East Bay Municipal District ("EBMUD") against the City of Oakland regarding the City's certification of a Supplemental Environmental Impact Report ("SEIR") and adoption of an Addendum for the former Oakland Army Base, specifically with respect to a proposed Auto Mall (the "CEQA Litigation"); and

**WHEREAS**, the Superior Court of the State of California (the "Court") issued a Tentative Statement of Decision ordering the City to (1) set aside its certification of the SEIR and its adoption of the Addendum; (2) prepare a new SEIR; (3) suspend all activity that could result in any physical change or alteration of the physical environment until the City is in compliance with California Environmental Quality Act ("CEQA"); and (4) file a return in the Court specifying what the City has done to comply with the writ; and

**WHEREAS**, the City disagrees with the Court's decision and is requesting, among other items, clarification whether the Court would require the City to prepare a new SEIR or Addendum for other project or project areas on the Army Base, e.g., the OMSS project or OMSS project area; and

**WHEREAS**, the ENA with OMSS will expire before a new SEIR or Addendum can be prepared and the administrative actions can be completed; now therefore be it

**RESOLVED:** That the Redevelopment Agency hereby authorizes the Agency Administrator to execute an amendment to the ENA in a substantially similar form to the amendment attached hereto (Exhibit A) and that will extend the term of the ENA from February 28, 2009 to the earlier of: (1) February 28, 2011; or (2) the resolution of the CEQA Litigation which, in the Agency's sole and absolute discretion, would permit the proposed OMSS project to proceed in compliance with CEQA; and be it

**FURTHER RESOLVED:** That the Agency hereby authorizes the Agency Administrator or his designee to take all actions necessary to carry out this resolution and its basic purposes; and be it

**FURTHER RESOLVED:** That all documents shall be reviewed and approved by the Office of the City Attorney as to form and legality prior to execution.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES – BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND  
CHAIRPERSON BRUNNER

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
Secretary of the Redevelopment Agency  
Of the City of Oakland, California

## EXHIBIT A

### SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT Oakland Maritime Support Services

This Second Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services ("Second Amendment") is made and entered into this 28<sup>th</sup> day of February 2009 ("Effective Date") by and between the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), and OAKLAND MARITIME SUPPORT SERVICES, INC., a California corporation ("Developer") (together, Agency and Developer are referred to as the "Parties"), pursuant to Agency Resolution No. \_\_\_\_\_ C.M.S, adopted on \_\_\_\_\_, 2009.

#### RECITALS

A. In November 2007, the Parties entered into an Exclusive Negotiating Agreement (Agreement) to explore the possibility of developing 15 acres in the East Gateway area within the former Oakland Army Base for a multi-use project that includes truck parking, a trans-load facility, offices for trucking companies or related businesses, retail, fuel, food and other services catering to trucking employees and businesses (the "Project"); and

B. Under the Agreement, the period for negotiations between the Parties was 180 calendar days, which period expired on August 11, 2008; and

C. The Parties extended the period for negotiations from August 11, 2008 to February 28, 2009 through a First Amendment to the Agreement; and

D. Conclusion of negotiations may be dependent in part on the resolution of litigation filed on May 17, 2007 by the East Bay Municipal District (EBMUD) against the City of Oakland and the Agency regarding the Supplemental Environmental Impact Report the City certified on December 5, 2006, and Addendum related thereto for the former Oakland Army Base under the California Environmental Quality Act (the "CEQA Litigation"); and

E. The Parties wish to amend the Agreement to extend the period for negotiations from February 28, 2009 to the earlier of: (1) February 28, 2011 or (2) the resolution of the CEQA Litigation which, in the Agency's sole and absolute discretion, would permit the Project to proceed in compliance with CEQA. ;

NOW THEREFORE, the Agreement is hereby amended as follows:

1. Section 1.4 is hereby deleted in its entirety and replaced with the following:

Section 1.4 Length of Negotiation Period. Unless extended by written mutual agreement after formal approval of the Agency's Governing Body, the period for negotiations between the Parties under this Agreement shall commence on the date of this Agreement and end on the earlier of: (1) February 28, 2011; or (2) the resolution of the CEQA Litigation which, in the Agency's sole and absolute discretion, would permit the Project to proceed in compliance with CEQA (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement.

2. The Parties hereby agree that all other terms, conditions, and provisions of the Agreement, as amended by the First Amendment, remain unchanged and in full force.

3. The persons signing this Second Amendment on behalf of Developer affirm that they are authorized to execute on Developer's behalf.

[Signatures on following page]

IN WITNESS WHEREOF, this Second Amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency of the City of Oakland and Oakland Maritime Support Services, Inc. has been executed by the Parties as of the date first written above.

**AGENCY:**

The REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: \_\_\_\_\_

Dan Lindheim  
Agency Administrator

Approved as to form and legality:

By: \_\_\_\_\_

Dianne Millner  
Agency Counsel

**DEVELOPER:**

OAKLAND MARITIME SUPPORT SERVICES, INC.,  
a California Corporation

By: \_\_\_\_\_

William I. Aboudi  
President